

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
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May 16, 2001

Michelle Pellicio  
Rocky Coast Framers, Inc.  
1863 Commercial Street  
Escondido, CA 92029

Re: Public Works Case No. 2000-074  
Lopez Ridge Neighborhood Park Project

Dear Ms. Pellicio:

This letter constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, I have determined that the construction of the Lopez Ridge Neighborhood Park ("Project") in the City of San Diego ("City") is a public work; however, the City's charter city status exempts it from the requirement to pay prevailing wages.

Factual Background

The City and Sierra Pacific West, Inc. ("Sierra") entered into a contract for this Project to be located within the Mira Mesa community planning area of the City. Lopez Ridge Neighborhood Park ("Park") is to be built on ten acres of a tract previously deeded to the City in fee title as a condition of City approval of this subdivision. When completed, the Project will remain City property. The Park will be maintained by the City.

The tract on which the Park will be located was previously rough graded at City expense. The Project is to include additional finish grading, retaining walls, a single story field house building, parking lot, children's play area, picnic facilities, par course, fencing, multi-purpose court, multi-sports field, sports field lighting, security lighting, concrete walks, irrigation systems, landscaping, and other park amenities. All construction will be performed within City limits.

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The \$2.1 million Project will be funded by assessments levied upon issuance of lot building permits by the Mira Mesa Public Facilities Benefit Assessment District ("District") which is located entirely within City boundaries. (See City Code, Chapter VI, Article 1, Division 22, § 61.2201) The District was formed pursuant to the provisions of a City ordinance authorizing the creation of special assessment districts through which the costs of constructing public facilities would be borne by the lands benefiting therefrom. (See § 61.2201.) All funds are deposited to the Mira Mesa Public Facilities Benefit Assessment District Fund 79006 ("Fund") to be used exclusively for District projects.

The stated purpose of the Project is to develop a local neighborhood park in the Mira Mesa area of the City. The City approved report that recommended construction of the Park states as justification for the Project: "This project will provide a neighborhood park for this area that is deficient in park and recreational facilities."<sup>1</sup>

### Discussion

Labor Code section 1720(a) generally defines public works to mean: "Construction, alteration, demolition, or repair work performed under contract and paid for in part out of public funds." Here, the Project is construction done under contract. Because the assessed funds were deposited into the coffers of the City, a public entity, these monies are public.<sup>2</sup> Consequently, the Project is a public work under Section 1720(a).

The primary issue here is whether the Project is a municipal affair such that the City's charter exempts it from prevailing wage obligations or a matter of statewide concern. Under Article XI, section 5 of the California Constitution, a city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." The City has, by operation of Section 2 of its charter, availed itself of the authority to exercise all powers with respect to municipal affairs subject only to the restrictions and limitations provided in its charter. Concerning prevailing wages, by repeal of

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<sup>1</sup> City Engineering and Development Department Mira Mesa Public Facilities Financing Plan and Facilities Benefit Assessment - August 1998.

<sup>2</sup> See Precedential Determination, Public Works Case No. 99-023, Orangecrest Community Park City of Riverside, September 13, 1999.

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Section 193 of its charter mandating prevailing wage on public work, the City has asserted that it is exempt from the Labor Code prevailing wage requirement for public work projects.<sup>3</sup>

Insofar as a charter city legislates with regard to municipal affairs, its charter prevails over general state law.<sup>4</sup> Municipal affairs are generally deemed to be matters that affect the local citizens rather than the people of the state at large.<sup>5</sup>

In *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115, the California Supreme Court set out the following factors for determining whether a project was exclusively a municipal affair subject to the charter city exception: (1) the extent of non-municipal control over the project; (2) the source and control of the funds used to finance the project; and, (3) the nature and purpose of the project. Related to the nature and purpose of the project are its geographic scope and extra-territorial effects.<sup>6</sup>

1. The Extent of Non-Municipal Control over the Project.

The City appears to have sole control over the construction of this Park. The Resolution approving the plans and specifications for the Project, authorizing the solicitation of bids, approving the expenditure of funds and authorizing the city manager to enter into an agreement with the lowest responsible bidder was passed by the City Council. The contract was let by the City. No state, county or federal agency is involved in the inspection, management or approval of any work performed under the contract. All construction will be performed within the City on land currently owned by the City. The Park will be owned and maintained by the City upon completion.

2. The Source and Control of Funds Used for the Project.

The Project will be financed entirely from District property assessments deposited by the City to the Fund, and approved for expenditure on this Project by the City. Moreover, the City Code

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<sup>3</sup> In the contract between the City and Sierra at page A-10, the City has agreed that no prevailing wage schedule is applicable to the project.

<sup>4</sup> *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.

<sup>5</sup> 66 Ops.Cal.Atty.Gen. 266, 271-272.

<sup>6</sup> *Young v. Superior Ct. in and for Kern County* (1932) 216 Cal. 512, 516-517; *Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2d 766, 771-772.

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requires that monies from this Fund be used only on projects within the District or be refunded to District property owners should the Fund be no longer required as determined by the City. (See § 61.2215.) No non-municipal funds from any source will be used to finance the Project. The source and control of all revenues to be used on this Project are municipal in nature.

3. The Nature and Purpose of the Project.

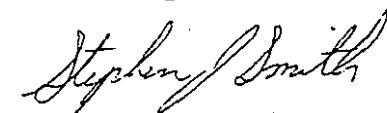
The nature and purpose of the Project is to provide what is consistently described as a "neighborhood park" within the Mira Mesa area of the City. The Park will be small in scope (ten developed acres on a seventeen acre tract) and is intended to provide recreational opportunities to City residents in an area that is deficient in park and recreational facilities. Exclusive use of District funds, raised by assessments on local properties benefited by this Project, supports a finding that the nature and purpose of the Project are local.

The geographic scope of the Project is strictly within City boundaries. There are no contemplated extra-territorial effects from the development of this neighborhood Park.

Conclusion

Based on the above, I find that this public works project falls within the ambit of a municipal affair of the City and does not involve a matter of statewide concern within the domain and regulation of the general laws of the state. The Project is funded entirely by City revenues. It is controlled entirely by the City without state, county or federal involvement. None of the construction work will be performed outside of the City. The purpose of the Project is to benefit those City residents in the Mira Mesa area who will pay for it by property assessment. Accordingly, this public works project is not subject to prevailing wage requirements.

Sincerely,



Stephen J. Smith  
Director

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